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SEP 03 1998

CONCORD, N.H.

1953

May 27

Honorable Charles Griffin, Chairman
House Ways and Means Committee
State House
Concord, New Hampshire

Dear Sir:

You have asked whether, in the light of Opinion of the Justices, 97 N.H. 543, the legislature can alter the tax on other tobacco products leaving the tax on cigarettes at its present rate.

That Court opinion was given in answer to a question, one section of which asked whether the legislature could constitutionally amend Revised Laws, chapter 79, by providing for a tax only upon the sale of all cigarettes sold at retail, thereby not taxing the sale of other tobacco products. The Court answered that question in the affirmative.

The legislature has liberal powers with respect to the classification of taxable property. It may be made for any just reason. Cigarettes are a distinctive class of property.

"In the selective process of classifying certain property for taxation and exempting other property the Legislature has a wide discretion which will be sustained "provided just reasons exist for the selection made." Opinion of the Justices, 94 N.H. 506, 508. Opinion of the Justices, 95 N.H. 548, 550. The Legislature has liberal powers with respect to the classification of taxable property. Cannon v. District, 74 N.H. 517. It may be made for any just reason. Opinion of the Justices, 82 N.H. 561, 574. If there is such reason and the proposed selection is not arbitrarily made or for the sole purpose of preferring some taxpayers to others it will be upheld." Opinion of the Justices, 97 N.H. 533, 536.

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The adoption of a tax rate on certain property differing from the rate on other property throughout the state is proper as held in Opinion of the Justices, 88 N.H. 500. See also, Haven v. The Attorney General, 91 N.H. 115. An inequality caused by taxing some property and not taxing other property is permitted. Opinion of the Justices, 94 N.H. 506.

The tax assessed by chapter 79, being upon the transmission of property in a distinctive way involves a different kind of taxability, and is to be treated as distinct as from the estate tax. Opinion of the Justices, 83 N.H. 500.

"The power of the legislature to classify property as taxable or non-taxable is a broad one, and the validity of its exercise has rarely been called in question. Classification of property by kind has always been recognized as proper. So, too, classification by use is said to be permissible. 1 Cool., Tax, s. 280. So long as there is a reasonable line of demarcation, and there is no attempt to make taxability depend upon a classification of owners, the legislative power in this matter is supreme. Opinion of the Justices, 82 N.H. 561, 574." Opinion of the Justices, 84 N.H. 559, 569.

In this connection it will be noted that in Opinion of the Justices, 95 N.H. 546 at page 548, sales of tobacco and tobacco products are held proper exemptions from a general sales tax of property passing by sale at retail and, yet, are otherwise taxed under the statute now being considered at a rate different from the sales tax rate proposed in that opinion.

The legislature can assess a tax on other tobacco products at a rate different from the present rate on said other tobacco products and cigarettes, and can leave the tax on cigarettes at its present rate.

Very truly yours,

George F. Nelson
Assistant Attorney General

tax on other
on all other
cigarettes at

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